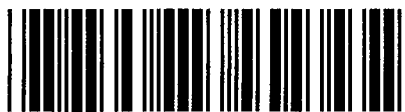




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CONTROL NO. 52200

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PETITION FOR RULEMAKING § BEFORE THE
REGARDING DISCONNECTIONS FOR §
NON-PAYMENT AND REQUEST FOR § PUBLIC UTILITY COMMISSION
EMERGENCY RELIEF §
§ OF TEXAS

PETITION FOR RULEMAKING AND REQUEST FOR EMERGENCY RELIEF

TO THE HONORABLE COMMISSION:

The Coalition of Competitive Retail Electric Providers¹ (hereafter "Petitioners") respectfully request that the Commission:

(1) Amend PUC Subst. R. §§25.29 and 25.483 so that Governor-declared states of disaster caused by catastrophic events such as tornadoes or hurricanes become events triggering a temporary prohibition on disconnections. Proposed amendments are found at page 5 herein.

(2) Adopt the proposed amendments as emergency rules² to be prepared for this summer's storms and other potential disasters so that consumers can't be disconnected during a Governor-declared state of disaster.

(3) Immediately end the current moratorium on disconnections which has lasted for over three months and threatens competition in the retail electric industry.

I. BACKGROUND AND NECESSITY FOR ACTION

On February 21, 2021, the Commission convened an emergency Open Meeting and issued an order directing action and granting exceptions to certain rules, including PUC Rule 25.483(c),

¹ The Coalition of Competitive Retailers supporting this filing are identified in Attachment One.

² Authority for emergency rulemaking found at PUC Procedural Rules 22.281(b) and 22.283 as well as Texas Government Code § 2001.034).

which relates to disconnection of a customer for nonpayment.³ The February 21 Order explicitly prohibited retail electric providers (“REPs”) from sending a request to disconnect a customer for nonpayment to transmission and distribution utilities (“TDUs”) and also explicitly prohibited TDUs from processing such requests.⁴ Prior disconnection moratoriums have lasted a few days, but this disconnection moratorium has continued throughout the spring and now into the summer with no guidance or direction from the Commission as to when normal rules will resume.

The Commission cited the Governor's February 12, 2021 disaster declaration as part of the basis for issuing its order in February.⁵ The Commission also relied upon the authority found in 16 TAC §22.5(a) and found that there existed a public emergency and imperative public necessity that constituted good cause for granting exceptions to specific Commission rules.⁶

On February 21, 2021, the winter weather event that had triggered the Governor's Disaster Declaration ended. Normal temperatures returned throughout Texas, and the electricity grid stabilized. Rolling blackouts had ceased occurring by approximately midnight on February 18, 2021. Recognizing these developments, on March 5, the Commission began terminating some of the exceptions created in the February 21 Order, such as the assessment of late fees on customers

³ *Id.* at 1.

⁴ *Id.* at 2.

⁵ *Id.* at 1 (citing Tex. Proclamation (Feb. 12, 2021)). The Proclamation cited Section 418.017 of the Texas Government Code and authorized the “use of all available resources of the state government and of political subdivisions that are reasonably necessary to cope with this disaster.” Further, citing section 418.016 of the Texas Government Code, the Governor directed that “any regulatory statute prescribing procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. The Proclamation also authorized the suspension of statutes and rules regarding contracting or procurement that “would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster.”

⁶ *Id.* at 1.

for delinquent bills.⁷ Contrary to Commission statements about returning to normal operations, though, the disconnection moratorium has been left in place. The multiple pleas filed by REPs in Project 51812 have not been addressed or even discussed by Commissioners.

Former PUC Chair DeAnn Walker stated during the February 21 emergency open meeting that the disconnect moratorium would last "until we get the financial part of this worked out which I'm hoping will be soon." This vague statement continues to be the only advice given to REPs who are left in the dark as to how much longer they must continue to purchase electricity to serve non-paying customers.

Through its emergency order, the Commission articulated that the disconnect moratorium was tied to the high prices (\$9,000 per MWh) experienced by market participants during the week of February 14-20, 2021 and was seeking to protect the end use customers (1) from receiving bills reflecting these high wholesale prices and (2) from being disconnected if they did not pay bills containing these high wholesale prices.⁸ In fact, there were numerous media stories discussing how customers were receiving bills in the thousands of dollars for power consumed over a few days during the week of February 14-20, 2021.⁹ Customers receiving these high bills were on prepaid plans whose electricity price was directly indexed to the wholesale price of power.¹⁰ However, the February 21 Order did not limit the disconnection moratorium only to customers on such plans. Instead, the Commission prevented *all REPs* from submitting disconnect requests irrespective of

⁷ Docket 51812, Order Terminating Exceptions to Certain Rules at 1 (Mar. 5, 2021).

⁸ February 21 Order at 1.

⁹ See, e.g., BBC "Texas weather: State should pay soaring power bills, says Houston mayor" (Feb. 22, 2021), *available at* <https://www.bbc.com/news/world-us-canada-56147311>.

¹⁰ Linda So and Jonathan Allen "Texas utilities can't stick customers with huge bills after storm: Abbott" (Feb. 21, 2021) *available at* <https://www.reuters.com/article/us-usa-weather-texas/texas-utilities-cant-stick-customers-with-huge-bills-after-storm-abbott-idUSKBN2AL0J7>.

the type of plan serving the end use customer, and prohibited TDUs from executing any disconnect requests they received.

As a result, REPs have been singled out to bear the burden of an open-ended requirement to pay for power to supply customers who are not paying their electricity bills even for services provided after the extraordinary pricing event and priced under normal market conditions. Procedural Rule §22.5 grants the Commission the right to suspend the operation of one or more of the sections of this chapter "if there exists a public emergency or imperative public necessity and the Commission ascertains that suspension will best serve the public interest and will not prejudice the rights of any party." The public emergency ended weeks ago, and the rights of REPs continue to be prejudiced.

While the DNP moratorium has a negative impact on all REPs, those REPs offering prepaid service face an added conundrum. Specifically, since deposits cannot be required for prepay customers, REPs providing prepay service have no mechanism to ensure payment during a disconnect moratorium as customers can simply switch to another service provider instead of paying balances owed to their original REPs. As a result, many prepaid providers have simply stopped marketing to and acquiring new customers during this moratorium further handicapping their ability to financially recover from this winter storm.¹¹ A prepaid provider may require only \$75 for a connection balance;¹² an amount that will only cover roughly 15 days of service. As stated above, the disconnection moratorium has lasted over 90 days, meaning that prepaid REPs have provided *75 days* of service without compensation from their non-paying customers.

If this untenable situation continues, the Commission can look forward to more

¹¹ See for example, Eligo Energy letter included in Attachment Two.

¹² 16 TAC 25(b)(1).

bankruptcies from REPs and a significant shrinking of the competitive market. The largest REPs may survive but there will be less innovation, less price competition, and more frustrated consumers.

II. PETITION FOR RULEMAKING

Pursuant to Texas Government Code § 2001.021 and PUC Proc. R. 22.281(a), Petitioners seek to amend PUC Subst. R. §§25.29(i) and 25.483(j) to add declared states of disaster events not caused by extreme temperatures to the instances where disconnections would be prohibited and to add maximum time limits for disconnection moratoriums.

A. Proposed Text of the Rule Amendments (proposed language underlined)

Rule 25.29 sub-part (i):

- (i) Disconnection during extreme weather or state of disaster. An electric utility cannot disconnect a customer anywhere in its service territory on a day when:
 - (1) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; ~~or~~
 - (2) the NWS issues a heat advisory for any county in the electric utility's service territory, or when such advisory has been issued on any one of the preceding two calendar days; or
 - (3) a state of disaster is declared by the Governor of the State of Texas, or when the duration of such disaster has occurred on any one of the preceding two calendar days.
 - (4) A disconnection moratorium for a state of disaster shall not last longer than 5 calendar days unless specifically continued for up to an additional 5 calendar days by written Commission order issued following notice and opportunity for interested persons to comment. The Commission may further continue such disconnection moratorium for subsequent periods of up to 5 calendar days by this process. Notice and comment on the continuance of a disconnection moratorium for a state of disaster shall specifically consider whether the disaster impacts the generation, distribution, or sale of electricity.

Rule 25.483 sub-part (j):

- (j) Disconnection during extreme weather or state of disaster. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency or state of disaster occurs. A REP shall offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency or other state of disaster.
- (1) The term extreme weather emergency shall mean a day when:
- (A) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or
- (B) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.
- (2) The term state of disaster shall mean a day when a state of disaster is declared by the Governor of the State of Texas, or when the duration of such disaster has occurred on any one of the preceding two calendar days in a county.
- (3) A TDU shall notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in its service area. The initial notice shall include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.
- (4) A disconnection moratorium for a state of disaster shall not last longer than 5 calendar days unless specifically continued for up to an additional 5 calendar days by written Commission order issued following notice and opportunity for interested persons to comment. The Commission may further continue such disconnection moratorium for subsequent periods of up to 5 calendar days by this process. Notice and comment on the continuance of a disconnection moratorium for a state of disaster shall specifically consider whether the disaster impacts the generation, distribution, or sale of electricity.

B. Brief Explanation of the Rule Amendments

This Petition for Rulemaking proposes that consumers be granted protection against disconnections during a declared disaster by amendments to existing PUC Subst. R. 25.29(i) and 25.483; just as the public's protection against disconnections during extreme heat and cold are currently found in those rules. Emergency relief is also requested to end the current disconnection moratorium, which has exceeded the February 15-19 disaster period by over three months and

threatens the financial integrity of the competitive retail electric industry as demonstrated in the attached letters from REPs.¹³

Current PUC Subst. R. §§25.29(i) and 25.483(j) address outlier temperature conditions as emergency conditions necessitating a prohibition on disconnections, but the rules do not address states of disaster as declared by the Governor. The proposed amendments would apply a disconnection moratorium to counties where states of disaster are declared by the Governor. The amendments would further provide that future prohibitions against disconnections would last for five (5) calendar days unless renewed by the Commission for successive five (5) day periods after notice and opportunity for comment.

C. Reasons the Amended Rules Should Be Adopted

Petitioners recognize that customers must be protected from disconnection during periods of extreme heat and extreme cold. Customers should also be protected from disconnections during states of disaster declared by the Governor that are not related to temperature changes.

The proposed rule amendments would protect the public by ensuring that members of the public are not at risk for disconnections during declared disasters such as hurricanes and tornadoes. While necessary to protect life and property in emergencies, prohibitions on disconnect for non-payment interrupt the normal course of business for electric providers and can create long-term market disruptions if left in place too long. Thus, Petitioners propose amendments to existing PUC Subst. R. §§25.29 and 25.483 to require that disconnections moratoriums can only last five days unless renewed by the Commission for subsequent five-day periods after notice and opportunity for comment. The amendments would provide certainty to electricity providers and ensure that a prohibition on disconnections would end after a reasonable time period.

¹³ See Attachment Two.

D. Statutory Authority for the Proposed Amendments

The Commission has statutory authority to enact these amendments under Public Utility Regulatory Act §§ 14.001, 14.002, 17.004(b), and 39.101(e).

REQUEST FOR EMERGENCY RELIEF

Petitioners again urge the Commission to rescind the current disconnect moratorium which was imposed on February 21. Petitioners understand that in adopting its order the Commission was protecting consumers who may have been enrolled on prepaid, indexed plans tied directly to the wholesale price of electricity. The extraordinary price spike of February 14 - 19 left these indexed plan customers with enormous balances owed on their accounts. However, the primary REP that offered this plan is no longer serving customers in Texas.¹⁴ As a result, the need for this type of blanket protection ended weeks ago.

In order to return to their normal billing and collection practices for both prepay and postpay customers, REPs need customers to pay their bills. REPs are already obligated to work with customers who express an inability to pay per the requirement to offer access to deferred payment plans.¹⁵ The imposition of a broad disconnect moratorium on this market only serves to incent customers to believe they will not have to pay the bills they are currently accruing for electricity. Further, by imposing a disconnection moratorium on REPs while simultaneously allowing ERCOT to resume normal invoicing and settlement timelines under its protocols, the Commission has further hampered REPs' abilities to meet their ongoing market obligations.

If the Commission finds elimination of the existing moratorium untenable at this time, Petitioners offer the following alternatives:

¹⁴ See *In re Griddy Energy LLC*, Cause No. 4:21-bk-30923 (Bankr. S.D. Tex.).

¹⁵ February 21 Order at 2.

- limit the DNP moratorium to bills containing consumption during the period of the disaster (February 12-18, 2021); or
- keep the DNP moratorium but allow REPs to automatically place delinquent accounts on a deferred payment plan (DPP) with a switch-hold.

CONCLUSION

Petitioners respectfully request that the Commission initiate a rulemaking proceeding under Texas Government Code § 2001.021 and PUC Proc. R. 22.281(a) to add declarations of disaster unrelated to extreme temperatures to the instances where disconnections would be prohibited and to provide a timeline for expiration of disconnection moratoriums. The Commission should further use emergency rulemaking powers to adopt the proposed amendments now so that Governor-declared disasters would be added to the instances where disconnection moratoriums would be applied and to limit the duration of such moratoriums and avoid unnecessary harm to the competitive retail electric marketplace.

Petitioners further pray that the Commission immediately take action to either lift the current disconnection moratorium or provide an alternate means that provides REPs with sufficient surety of payment from their customers.

Respectfully Submitted,

Mark Foster

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Attachment One

Coalition of Competitive Retail Electric Providers Supporting this Petition for Rulemaking and Request for Emergency Relief

Background

The Coalition of Competitive Retailers is an ad hoc group of competitive Retail Electric Providers that joined together in its desire to address the market issues stemming from the February 2021 Winter Weather Emergency.

Participants in this filing:

3000 Energy Corp. d/b/a Penstar Power
Brooklet Energy Distribution, LLC
Eligo Energy TX, LLC
Pogo Energy, LLC
Summer Energy, LLC
Young Energy, LLC d/b/a Payless Power

These companies serve more than 130,000 customers in Texas and employ more than 200 employees.

Attachment Two

Letters from REPs



Tuesday, June 1, 2021

Hon. Peter Lake, Chairman
Hon. Will McAdams, Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue, 7th Floor
Austin, TX 78711

RE: Petition for Rulemaking Regarding Emergency Event Disconnection Prohibition and Request for Emergency Relief

Dear Chairman Lake and Commissioner McAdams:

Eligo Energy TX, LLC ("Eligo") is an independent retail electricity provider that services thousands of residential customers located throughout Texas. We support both pre and postpaid products and service a diverse group of customers throughout the state.

The DNP Moratorium has caused harm to Eligo's ability to operate at full capacity in Texas. As a result of this measure, Eligo's ability to take on new customers has been seriously hindered. Eligo has had to terminate Texas employees and delay new product launches that could have helped Texas customers throughout this difficult time. The struggle this moratorium places on Suppliers grows more and more burdensome each day. If it remains in place, competition in the market will be all but eliminated.

Eligo hereby supports the Petition for Rulemaking Regarding Emergency Event Disconnection Prohibition and Request for Emergency Relief.

Sincerely,

/s/Alexander Rozenblat

Alexander Rozenblat
Chief Legal Officer
Eligo Energy TX, LLC
201 W Lake St. Ste 151
Chicago IL 60606



YOUNG ENERGY, LLC D/B/A PAYLESS POWER

Mailing Address: PO Box 470487 / Fort Worth, TX 76147

Physical Address: 7524 Mosier View Ct, Ste 100 / Fort Worth, TX 76118

Contact TN: 817-371-9414 Fax: 817-887-1738

2021 MAY 13 PM 12:14

RECEIVED
PUBLIC UTILITY COMMISSION
FILING

Via Email Transmittal and Interchange Filing in Project 51812

Hon. Peter Lake, Chairman
Hon. Will McAdams, Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue, 7th Floor
Austin, TX 78711

RE: Request to Lift the Disconnection for Non-Payment ("DNP") Moratorium
PUC Docket No. 51812

Dear Chairman Lake and Commissioner McAdams:

Texas Retail Electric Providers ("REPs") need your help to survive and continue to provide a vibrant competitive marketplace to benefit Texas consumers. Specifically, at your Open Meeting of May 21, 2021, the Commission must act and rescind the February 21, 2021 disconnection for non-payment ("DNP") moratorium.¹

REPs have already made *three* formal requests to the Commission for emergency action and relief from the DNP moratorium which effectively requires REPs to purchase power to serve customers who do not pay their electric bills. The competitive industry cannot last long if this untenable situation continues.

We joined a group of REPs in a Third Request for Emergency Action² with the hope that the new Commission would act at its May 6 Open Meeting to return our industry to a semblance of normalcy. In that Third Request, REPs pointed out that the moratorium on disconnection was created by an exception to 16 TAC §25.483(c) which relates to disconnection of a customer for nonpayment. The Commission's procedural rule §22.5 grants the Commission the right to suspend the operation of one or more of the sections of this chapter "if there exists a public emergency or imperative public necessity and the Commission ascertains that suspension will best serve the public interest and will not prejudice the rights of any party." The public emergency ended weeks ago, and the rights of Payless Power and all other REPs continue to be prejudiced. The Commission must act now.

Payless Power is headquartered in Fort Worth where 85 people are employed. We specifically serve 35,000 customers under prepaid plans per Commission rule 25.498. Our prepaid plans have been popular with consumers who may be credit-challenged or simply like the certainty and convenience of prepaid electric service. Prepaid service is a unique feature of the Texas competitive electricity market; it provides consumers with an alternative to paying a very high deposit. While traditional service providers require deposits equal to an amount up to 60 days of summertime usage, prepaid providers are not allowed to collect deposits. Instead, Commission rules limit the upfront payment to

¹ Project No. 51812, *Order Directing Certain Actions and Granting Exceptions to Certain Rules*, February 21, 2021.

² Project No. 51812, *Coalition of Competitive Retail Electric Providers Third Request for Emergency Action*, April 1, 2021.

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Hon. Peter Lake
Hon. Will McAdams
May 13, 2021
Page 2 of 2

start prepaid service to no more than \$75 down, which in most cases covers about 15 days of service. Therefore, prepaid providers are much more exposed to a suspension of disconnections as they only have up to 15 days on hand to “weather-the-storm” during a moratorium.

Young Energy has made prepaid service its business, and it is our only business since 2008. We provide exceptional prepaid service. Most retail energy insiders will tell you how hard it is to be successful in the prepaid space; it takes highly advanced systems, sophisticated business rules, highly trained customer care representatives, and carefully engineered products. We strive every day to provide the consumer with flexible payment terms, unique messaging coordinated in text, email, voice and paper mail mediums, and honest straight-forward non-gimmicky electric service. Yet lack of Commission attention to the current disconnection moratorium threatens our business.

REPs have experienced moratoriums on DNPs due to emergency conditions before. These previous moratoriums have lasted a few days – *but we have never before had to continue to provide power to non-paying customers for eleven weeks and counting*. The present situation is untenable and probably unlawful. The normal rules have been interrupted by a suspension that has lasted almost three months without any response from regulators and no direction as to how much longer lawfully enacted rules will be ignored.

We were sadly disappointed when there was not even a discussion of this issue at the May 6 Open Meeting. Hopefully, this was an oversight and not indifference to the Commission-created situation which threatens the viability of our business, as well as threatening the financial health of many other REPs in the marketplace.

Please consider and grant the Coalition of Competitive Retail Electric Providers’ Third Request for Emergency Action on or before your May 21 Open Meeting so that further damage to the competitive marketplace can be avoided.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Young', written over a horizontal line.

Brandon Young, CEO

cc: Mr. Thomas Gleeson, Executive Director (via email)
Ms. Connie Corona, Director of Competitive Markets (via email)

Pogo Energy
5215 N O'Connor Blvd
Suite 630
Irving, TX 75039



May 27, 2021

Hon. Peter Lake, Chairman
Hon. Will McAdams, Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue, 7th Floor
Austin, TX 78711

RE: Petition for Rulemaking Regarding Emergency Event Disconnection Prohibition and Request for Emergency Relief

Dear Chairman Lake and Commissioner McAdams:

Pogo Energy is headquartered in Irving, TX where 12 people are employed. We have built our business to help the underserved market with a competitive, honest, pay-as-you-go electricity service. Over the past 3 years we have grown to serve over 14,000 customers in Texas and have been recognized by the PUCT as a 5-Star rated customer service retailer.

Out of cash. The extended and egregious suspension of disconnects for non-pay has my business becoming insolvent before the end of July. We are currently seeing 3x the number of customers become delinquent than when it is business as usual. We are being played as fools. We must act now to remove the suspension of DNPs and reverse the cash shortage or my customers may end up dropping to POLR. Our customers deserve better.

Thank you in advance for your prompt attention to this very important matter.

Pogo Energy hereby supports the Petition for Rulemaking Regarding Emergency Event Disconnection Prohibition and Request for Emergency Relief.

Sincerely,

A handwritten signature in black ink, appearing to be "Phil Terry", written over a horizontal line.

CEO, Pogo Energy
phil.terry@pogoenergy.com
www.PogoEnergy.com
214.724.9205